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Supreme Court, U.S.
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No. ———

In the Supreme Court of the United States

TED SMITH AND RYAN'S RESTAURANT GROUP INC., F/K/A RYAN'S FAMILY STEAK HOUSES, INC.,

Petitioners,

v.

STATE OF WEST VIRGINIA EX REL. CHRYSTAL SAYLOR,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case involves the validity of Petitioners' pre-dispute arbitration agreement, execution of which is a mandatory pre-requisite to employment at its national chain of family restaurants in the twenty-three (23) states where it does business. Due to the West Virginia Supreme Court of Appeals' blatant failure to properly apply and follow the Federal Arbitration Act, this Petition presents the following much larger question with far-reaching implications for all businesses using pre-dispute arbitration agreements on a national basis:

May a State court of last resort subject arbitration agreements to excessive scrutiny in a search for grounds upon which to declare such agreements unenforceable under State contract law without thereby demonstrating the very judicial hostility to arbitration agreements that the Federal Arbitration Act was enacted to prevent?

LIST OF PARTIES TO THE PROCEEDING

PARTIES TO PROCEEDING

The Petitioners are Ryan's Restaurant Group, Inc. f/k/a Ryan's Family Steak Houses, Inc. and Ted Smith, the manager of the local Ryan's restaurant where Respondent worked. The Respondent is a former employee of Petitioner who brought this action, alleging a violation of the West Virginia Human Rights Act, W.Va. Code §§ 5-11-1 *et seq.*

RULE 29.6 STATEMENT

Ryan's Restaurant Group, Inc. f/k/a Ryan's Family Steak Houses, Inc. is a publicly traded company which has no parent company and wholly owns the following subsidiaries: Big R Procurement Company, LLC, Fire Mountain Restaurants, Inc., Ryan's Properties, Inc. and Rymark Holdings, Inc. Petitioner Ted Smith and the Respondent are individuals with no corporate affiliations.

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PETITION FOR WRIT OF CERTIORARI

Ryan's Restaurant Group, Inc. f/k/a Ryan's Family Steak Houses, Inc. and Ted Smith (hereinafter collectively "Ryan's" or the "Company") respectfully petition for a writ of certiorari to review the judgment of the West Virginia Supreme Court of Appeals in this case.

OPINION BELOW

The opinion of the West Virginia Supreme Court of Appeals is unpublished. *Saylor v. Smith*, No. 32042 (W. Va. May 11, 2005). (App. A, *infra*, 1a-21a).

JURISDICTION

The West Virginia Supreme Court of Appeals issued its Opinion on May 11, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The arbitration agreement at issue is subject to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1, *et seq*. Section 2 of the FAA states:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and

enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

STATEMENT OF THE CASE

This case centers on the validity of a nationwide third-party arbitration system used by Ryan's for resolving disputes with its employees. The West Virginia Supreme Court of Appeals' decision not only affects the immediate litigants as well as the tens of thousands other current Ryan's employees across the country where the Company transacts business,[1] but more importantly, has far reaching implications for every business utilizing pre-dispute arbitration agreements on a national basis.

All applicants for employment with Ryan's, including the Respondent, are required to execute a "Job Applicant Agreement to Arbitration of Employment Related Disputes." The agreement to arbitrate completed as part of the application process is between the individual applicant and Employment Dispute Services, Inc. ("EDSI"), a third party provider of alternative dispute resolution services to a number of unrelated businesses, one of which is Ryan's.

Respondent initiated this lawsuit on October 8, 2003 by filing a claim under the West Virginia Human Rights Act and simultaneously requesting the court to declare her arbitration agreement invalid. Petitioners timely moved to compel arbitration under the FAA. The Berkeley County, West Virginia Circuit Court issued its Order on January 5, 2004 granting Ryan's Petition to Compel Arbitration in a sex

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[1] Ryan's has over 25,000 employees in its chain of family restaurants located in twenty-three (23) states.

harassment lawsuit brought under the West Virginia Human Rights Act, W.Va. Code §§ 5-11-1, *et seq.* (App. B., *infra*, 22a-34a). In so ruling, the trial court rejected all the arguments subsequently adopted by the appellate court.

Respondent then filed a writ of prohibition with the West Virginia Supreme Court of Appeals. The writ of prohibition is an extraordinary remedy under West Virginia law to be used only where the trial court exceeded all possible bounds of legitimate power. According to West Virginia Code § 53-1-1:

> The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.

In *State ex rel. Wells v. Matish*, 600 S.E.2d 583 (W.Va. 2004), the West Virginia Supreme Court of Appeals set forth the following standard for considering a writ of prohibition:

> Prohibition lies only to restrain inferior courts from proceeding in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for [a petition for appeal] or certiorari. In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower court exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that